

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DATE 4/11/2023

DISTRICT JUDGE
Amos L. Mazzant, III

COURT REPORTER: Chris Bickham
COURTROOM DEPUTY: Keary Conrad

UNITED STATES OF AMERICA

V.

CASE NUMBER 4:20CR212

DEBORAH MERCER-ERWIN (1)

ATTORNEY FOR GOVERNMENT

Ernest Gonzalez, Heather Rattan and Lesley Brooks, AUSA

ATTORNEY FOR DEFENDANT

Matthew Cyran, Joe White, Kate White

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

TIME:	MINUTES: Jury Trial – Day 1
8:32 a.m.	Court in session. Court notes appearance of counsel.
8:35 a.m.	Court hears from Defendant's counsel, Joe White regarding an oral motion for mistrial relating to voir dire. Court orally denies.
8:36 a.m.	Defendant's counsel, Joe White regarding rolling exhibit list and document production.
8:41 a.m.	Court hears response from Government AUSA Ernest Gonzalez regarding grand jury proceedings.
8:45 a.m.	Defendant's counsel, Joe White continues argument regarding document production and orally requests motion to continue to effectively represent his client. Court denies Defendant's oral motion to continue.
8:50 a.m.	Defendant's counsel, Joe White continues with objections regarding witness Grace Howell. Court overrules objection to the witness being a lay witness.
8:53 a.m.	Defendant's counsel, Joe White continues with objections to opening statement demonstratives. Court hears response from the Government. Court overrules Defendant's objections.
	Court hears from Government AUSA regarding Justin Marshall testimony. Offer outside the presence of the jury to make things go smoothly.
8:57 a.m.	Court hears from Government AUSA Lesley Brooks arguing regarding advice of counsel being brought up in opening statement.
9:07 a.m.	Jury seated.
9:04 a.m.	Court reads preliminary instructions to jury.
9:32 a.m.	Defendant's counsel, Joe White invokes the rule and Court advises the rule will be invoked after opening statement.
9:32 a.m.	Government begins opening statement.
10:14 a.m.	The Government concludes opening statement.

10:14 a.m.	Defendant's counsel, Joe White requests bench conference.
10:15 a.m.	Jury excused for morning break.
10:28 a.m.	Court re-convened. Court hears from Government AUSA, Ernest Gonzalez regarding review of exhibits and group admission. Parties will confer over lunch.
10:30 a.m.	Jury seated.
10:31 a.m.	Defendant's counsel begins opening statement.
11:05 a.m.	Defendant's counsel concludes opening statement.
11:05 a.m.	Court notes that the rule has been invoked and instructs attorneys to keep an eye on witnesses that enter the courtroom.
11:06 a.m.	Government AUSA Ernest Gonzalez calls Special Agent Justin Marshall. Agent Marshall is placed under oath. Government AUSA Ernest Gonzalez begins direct examination.
11:18 a.m.	Government AUSA, Ernest Gonzalez refers witness SA Justin Marshall to demonstrative Exhibit 92. Government AUSA offers Exhibit 92 as demonstrative exhibit. Defendant objects to foundation and authentication. Court overrules Defendants objection. Exhibit 92 is admitted as demonstrative only.
11:26 a.m.	Government AUSA, Ernest Gonzalez refers witness SA Justin Marshall to demonstrative Exhibit 41. Government AUSA offers Exhibit 41 as demonstrative exhibit. Defendant objects to foundation and authentication. Court overrules Defendants objection. Exhibit 41 is admitted as demonstrative only.
11:45 a.m.	Government offers Exhibit 58D. Defendant objects to foundation, predicate and authentication. Government Exhibit 58D is admitted.
11:52 a.m.	Government AUSA, Ernest Gonzalez refers witness SA Justin Marshall to demonstrative Exhibit 118. Government AUSA offers Exhibit 118 as demonstrative exhibit. No objection. Exhibit 118 is admitted as demonstrative only.
11:55 a.m.	Defendant's counsel, Joe White requests bench conference.
11:59 a.m.	Jury recess for lunch.
1:00 p.m.	Court re-convenes. Parties have an agreement regarding the exhibits.
1:01 p.m.	Court hears from Defendant's counsel, Joe White regarding the Government's pending Motion to Compel and Bank of America records. Defendant's counsel offers an affidavit of certification.
1:06 p.m.	Government AUSA Rattan notes that the Bank of America records encompass Government Exhibits 12, 13, 14, 15, 16, 17, 18, 21, 45b, 45c, 114, and 121.
1:07 p.m.	Defendant does not agree, and the Court will grant the motion to compel and require the custodian to appear.
1:09 p.m.	Government AUSA Gonzalez discusses upcoming exhibits to be offered being exhibits from the server (Exhibit 1) and exhibits from that server based on the search warrant served on Cyrus One.
1:09 p.m.	Defendant objects to all exhibits coming in as to hearsay and not complete escrow agreements. The Court will address objections as evidence comes in.
1:15 p.m.	Jury seated.
1:16 p.m.	AUSA Gonzalez continues direct examination of SA Marshall.
1:27 p.m.	Defendant's counsel, Joe White requests bench conference.
1:30 p.m.	AUSA Gonzalez continues direct examination of SA Marshall.
1:33 p.m.	AUSA Gonzalez offers Government Exhibit 1.
1:33 p.m.	Defendant's counsel, Joe White begins voir dire of the witness.

1:36 p.m.	AUSA Gonzalez offers Government Exhibit 1. Defendant objection to hearsay content on 12 terabytes of information. Objection overruled. Exhibit 1 is admitted as to evidence of the server as it was when the search warrant was served.
1:38 p.m.	AUSA Gonzalez offers Government Exhibit 1a. Defendant objection to foundation and authenticity. Government offers the exhibit pursuant to 801(d)(2)(a) and 801(d)(2)(e) regarding weight and not admissibility. Objection overruled. Exhibit 1a is admitted.
1:42 p.m.	Bench conference in regard to exhibit.
1:49 p.m.	The Court overrules the Defendant's objection (at bench conference).
1:49 p.m.	AUSA Gonzalez continues with direct examination of SA Justin Marshall.
1:58 p.m.	AUSA Gonzalez offers Government Exhibit 20. No objection. Government Exhibit 20 is admitted.
2:00 p.m.	AUSA Gonzalez offers Government Exhibit 21. Objection to relevance. Government lays further foundation and re-offers Government Exhibit 21 is admitted. No objection. Government Exhibit 21 is admitted.
	AUSA Gonzalez offers Government Exhibit 22. Objection as to relevance of totality. Objection overruled. Government Exhibit 22 is admitted.
2:06 p.m.	AUSA Gonzalez offers Government Exhibits 22A, 22B, 22C.
2:06 p.m.	Defendant's counsel, Joe White voir dire of SA Justin Marshall. Defendant's counsel objects to 22B as not Deborah Mercer's phone number. Defendant's counsel withdraws objection to 22A and 22C.
2:09 p.m.	Government Exhibits 22A and 22C are admitted.
2:11 p.m.	Government Exhibit 23A and 23B offered. Defendant's counsel voir dire of SA Marshall regarding consent to search. No objection by defense. Court admits Government Exhibits 23A and 23B.
2:13 p.m.	Government Exhibit 23C offered. Objection no foundation. Government lays further foundation. Government Exhibit 23C conditionally admitted. Government will verify.
2:14 p.m.	Government Exhibit 24 offered. Defendant's counsel voir dire the witness. Objection under doctrine of completeness and foundation. Objection overruled. Government Exhibit 24 is admitted.
2:17 p.m.	Government Exhibit 29 offered. Defendant requests bench conference and objects to authenticity, foundation, govt not identified who prepared the document (highlighted) and when it was created. Exhibit 29 is admitted as demonstrative exhibit only.
2:23 p.m.	Government Exhibit 49 offered. No objection. Government Exhibit 49 is admitted.
2:23 p.m.	Government Exhibit 43 offered. Defendant's counsel objects not proper photograph of the website not a proper demonstrative exhibit of my clients' website. Government Exhibit 43 is admitted. Defendant's counsel objects to a portion of it. The Government will modify it and no further objection. Government will amend the exhibit and admit the modified version at a later time.
2:28 p.m.	Government Exhibit 94 is offered. Defendant's counsel objects to improper exhibit, authentication, foundation, and relevance. Government Exhibit 94 is offered as demonstrative and admitted as demonstrative.
2:29 p.m.	Bench conference.
2:35 p.m.	Government AUSA Gonzalez continues direct examination of SA Marshall and offers Government Exhibits 1B, 1C, 1E, 1F, 1G; 2A, 2B, 2C, 2D, 2E, 2F; 3A-J, 4A-H, 5A-E, 6A, 6B, 6C, 6D, 6E, 6G, 6H *excluding 6F; 7A, 7C, 7D, 7E, 7F, 7G *excluding 7B; 8A-W, 9A, 9B, 9C; 10A, B, C, G *excluding D, E, F; 11A, 11B, 11C. Court conditionally admits these exhibits subject to the bench conference.

	Government offers Government Exhibits 10D and 10F. No objection. Government Exhibits 10D and 10F are admitted.
2:50 p.m.	Government offers Government Exhibit 6F. Government Exhibit 6F is admitted. Defendant's counsel voir dire's the witness. Government Exhibit 6F is admitted.
2:54 p.m.	Government offers Government Exhibits 51A, 52A, 53A, 54A, 55A, 56A, 57A, 58A, and 59A. No objection. 51A, 52A, 53A, 54A, 55A, 56A, 57A, 58A, and 59A are admitted.
	Government offers Exhibits 60A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 68A, 69A offered. No objection. Exhibits 60A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 68A, 69A are admitted.
2:55 p.m.	Government offers Exhibits 71A, 72A, 73A offered. No objection. Exhibits 71A, 72A, 73A are admitted.
2:56 p.m.	Government offers Exhibit 96D offered. No objection. Government Exhibit 96D is admitted.
	Government offers Exhibit 96A. Defendant objects to relevance and knowledge. Objection overruled. Government Exhibit 96A is admitted.
3:03 p.m.	Government offers Exhibit 96B. Defendant objects to relevance, hearsay, and knowledge. Objection overruled. Government Exhibit 96B is admitted.
3:06 p.m.	Government offers Exhibit 96C. Defendant objects to foundation as to date, time and place and who took the video and identification of the airplane. Objection overruled. Government Exhibit 96C is admitted.
3:07 p.m.	Government passes the witness.
3:08 p.m.	Jury excused for break.
3:25 p.m.	Court re-convened. Jury seated.
3:25 p.m.	Defendant's counsel, Joe White begins cross examination of SA Justin Marshall.
4:56 p.m.	Pass the witness.
4:58 p.m.	Bench conference.
4:58 p.m.	Government AUSA Heather Rattan calls Michael Martinez. Witness placed under oath. Government AUSA Heather Rattan begins direct examination.
5:01 p.m.	Court calls in counsel for BOA.
5:03 p.m.	Government AUSA Heather Rattan offers Government Exhibits 12, 13, 14, 15, 16, 17, 18, 45A, 45B, 45C, 75, 114 and 121. Defendant's counsel objects and would like to take the witness on voir dire as to 45A, B and C. Government re-offers all exhibits. Defendant's continue objection as to 45A, B and C and 75.
5:05 p.m.	Admit 12, 13, 14, 15, 16, 17, 18, 114, and 121 are admitted.
5:05 p.m.	Jury released for the day.

5:06 p.m.	Court adjourned. Govt Exhibits Admitted: 1, 1A, 6F, 10D, 10F, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 22A, 22C, 23A, 23B, 24, 49, 51A, 52A, 53A, 54A, 55A, 56A, 57A, 58A, 58D, 59A, 60A, 61S, 62A, 63A, 64A, 65A, 66A, 67A, 68A, 69A, 71A, 72A, 73A, 96A, 96B, 96C, 96D, 114, 121. To be modified before fully admitted: 43 Conditionally admitted: 1B, 1C, 1E, 1F, 1G; 2A, 2B, 2C, 2D, 2E, 2F; 3A-J, 4A-H, 5A-E, 6A, 6B, 6C, 6D, 6E, 6G, 6H; 7A, 7C, 7D, 7E, 7F, 7G; 8A-W, 9A, 9B, 9C; 10A, B, C, G, 23C Demonstrative Only Exhibits: 29, 41, 92, 94, 118
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DAVID O'TOOLE, CLERK

BY: Keary Conrad

Courtroom Deputy Clerk